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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,515	11/24/2003	Steve Stewart	1238U002	5326

41461 7590 10/07/2004

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EXAMINER

FETSUGA, ROBERT M

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 10/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/721,515

Applicant(s)

STEWART, STEVE

Examiner

Robert M. Fetsuga

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16, 18 and 19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "first bushing" set forth in claim 8 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Applicant argues at page 7 of the response filed September 1, 2004 elements 25 and 32 are the first bushing and first geared shaft. The examiner can not agree. While element 25 is the first geared shaft, element 32 appears to be the "second bushing" (as claimed) since it secures the second geared shaft 29 as disclosed at paragraph 0021, lines 4-5 and paragraph 0023, lines 9-10.

Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be

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labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Proper antecedent basis for the "first bushing" set forth in claim 8 could not be found in the specification. Applicant is reminded claim terminology in mechanical cases should appear in the descriptive portion of the specification by reference to the drawing(s). Element 32 does not appear to respond to the "first bushing" (as claimed) as discussed supra.

3. Claims 9, 12 and 13 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 9 recites a "friction bushing". Implementation of this subject matter is neither taught by the instant disclosure

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nor evident to the examiner. This element is not described in the specification, nor is it illustrated in any discernable manner in the drawing figures, to teach one how the claimed functions are effected thereby. Claims 12 and 13 also recite this subject matter. Applicant argues at page 7 of the response a friction bushing is well known in the art. The examiner does not necessarily disagree, however, use of the claimed friction bushing (elements 32 or 33) is not clear from applicant's disclosure. The bushings 32, 33 appear to engage bearings 31,34 which would not provide any significant friction.

Claim 13 recites the friction bushing as being "adjustable". Implementation of this subject matter is neither taught by the instant disclosure nor evident to the examiner. Applicant argues at page 7 of the response paragraph 0021 teaches this subject matter. The examiner can not agree. Tightening bolt 30 would appear to merely clamp bearings 31,34 against brackets 21,22.

4. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claim is unclear as to whether the "toilet" is intended to be part of the claimed combination since structure of the

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"apparatus" is defined as being connected thereto (lns. 3-4), but no positive structural antecedent basis therefor has been defined.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 1, 2, 5-9, 12-16, 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Knudsen.

The Knudsen reference (Figs. 1-4) discloses an apparatus comprising: a first bracket (left side of 11); a second bracket (right side of 11); a bowl 17; a first geared 35 shaft 34; a lever 12 including a foot pedal 32; a second geared 37 shaft 38; a flange 13; a floor (Fig. 1); a plate 15; a first bushing (col. 2 lns. 58-59); a second bushing (col. 2 ln. 70); a toilet seat

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24; a toilet cover 25; a toilet including a tank (col. 3 ln. 53); and a cover 11, as claimed. Re claims 9, 12 and 13, the bushing would provide some "friction".

Applicant argues at page 10 of the response Knudsen teaches use of two individual gears disposed on the side of a toilet. The examiner does not necessarily disagree, however, claims 1, 18 and 19 do not distinguish this disclosure in Knudsen. The gears 35,37 are mounted on shafts 34,38, and the brackets 11 are "disposed toward" respective sides of the bowl 17.

7. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knudsen and Alberts.

Although the lever of the Knudsen apparatus does not include upper and lower portions, as claimed, attention is directed to the Alberts reference which discloses an analogous apparatus which further includes a lever 14 having upper 17a and lower 17 portions. Therefore, in consideration of Alberts, it would have been obvious to one of ordinary skill in the art to associate upper and lower portions with the Knudsen apparatus in order to enable length adjustment of the lever.

Applicant appears to have acquiesced this grounds of rejection by not responding substantively thereto.

8. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knudsen.

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The choice of gear ratio would appear an obvious choice to be made depending upon desired seat movement speed.

Applicant appears to have acquiesced this grounds of rejection by not responding substantively thereto.

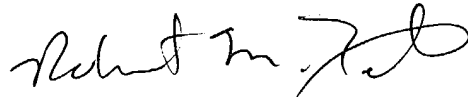
9. The grounds of rejection have been reconsidered in light of applicant's arguments, but are still deemed to be proper.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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10. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 703/308-1506 who can be most easily reached Monday through Thursday.

A handwritten signature in black ink, appearing to read "Robert M. Fetsuga", with a stylized flourish at the end.

Robert M. Fetsuga
Primary Examiner
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